IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO. 2055 OF 2002

IN

SUIT NO. 36 OF 2000

IN

PETITION NO. 265 OF 1999.

Mr. Maharaj Jani Shantilal Muldev Deceased

Subhadraben Shantilal Jani ... Plaintiff.

Vs.

Gunvantrai Shantilal Jani ... Defendant.

Mr.Harihar Bhave i/b. Bhave & Co. for the Plaintiff.

Mr. B.G.Saraf for the Defendant.

Coram : S.K.Shah, J.

Date : December 9, 2004.

P.C.:

1. This is Plaintiffs motion, seeking relief of injunction against the Caveator - defendant to stop cooking and dining and staying in her portion of the premises i.e. 1st floor, towards the south side of the temple building or any part of the said premises, which is occupied by her.

2. The grounds mentioned are that after the death

of the deceased, all the sons were provided independent accommodations. Similarly, the defendant Caveator was also provided separate accommodation which is about 700 square feet, consisting of bed room, hall and kitchen. There is also an independent facility of kitchen. Although earlier during the life time of the deceased cooking was done in the premises, presently occupied by the petitioner, after the death of the deceased, each one of the sons has sifted to their independent accommodation, having their independent kitchen and cooking. Despite the defendant having been provided with independent accommodation with kitchen facilities, he comes for cooking in he premises occupied by the petitioner. Only for the purpose of cooking, the servant comes in the premises of the petitioner. It is alleged that said act of the defendant disturbs the privacy of the petitioner. It is further alleged that the petitioner is staying all alone in the said premises and she has right and liberty to enjoy and live independently and peacefully. The defendant, however, is harassing the petitioner by keeping coming on to the petitioner’s premises intermittently through out the day which causes lot of inconvenience to the petitioner. It is further alleged that after the death of the deceased, the family of the defendant had became very rude and adamant and their behaviour towards the petitioner became mannerless and humiliating. The defendant picks up quarrels on flimsy grounds. On such one occasion, the defendant also beat the petitioner causing injury to her person. It is submitted by the

learned Counsel for the petitioner that recently there was an incident of intruder coming to the premises of the petitioner who stabbed the petitioner and seriously injured her and she was required to be hospitalised.

3. This motion has been opposed by the defendant on the ground that although the Petition was filed in the year 1999, the motion is taken out belatedly, seeking the relief of injunction against the defendant. Therefore, it is contended that at this interim stage, such a relief cannot be granted. The Caveator-defendant also denied the allegations of harassment etc. Ultimately, the defendant seeks dismissal of the motion.

4. I have heard the learned Counsel on both sides. The learned Counsel for the Petitioner submits that there were attempts for amicable settlement of the matter, however, the same have failed. He particularly pointed out an incident which occurred few days ago that an intruder came to the premises of the petitioner and seriously injured the petitioner by stabbing the petitioner and the petitioner was required to be hospitalised. It is submitted that the petitioner is 75 years old lady, desires to lead her remaining life peacefully and without disturbance. The submissions advanced on behalf of the defendant are only regarding latches and lacunas.

5. I specifically inquired at the bar whether the

defendant is provided with an independent accommodation having kitchen facility and the same was admitted. Since after the death of the deceased all the sons of the deceased are having independent accommodations with independent kitchen and cooking facilities. There is no reason for the defendant to insist on coming to the petitioners premises only for the purpose of cooking, while the defendant and others having independent accommodations with kitchen facility. The allegation of harassment is made by an old mother against the defendant, who is her step son. There is no reason for the petitioner to make false allegations against the defendant, whom she had tolerated for a long period. The attitude of the defendant seems to be adamant. There is no plausible reason for him to insist to keep on coming to the petitioner’s premises merely for the purpose of cooking.

6. Under the circumstances, it would be equitable to grant an injunction against the defendant as prayed for. It will not cause any inconvenience to the defendant as he is having independent accommodation with kitchen facility and the other facilities. Even if such facility is not available, the defendant can make an arrangement for having the same. If injunction is not granted at this stage, it will cause lot of inconvenience to the petitioner, who is 75 years of age and there is also likelihood of there being danger to her life, which can be seen from the incident occurred few days ago, in which the intruder had entered the

premises of the petitioner and attacked her. This possibility is more because there is a common family temple situated on the ground floor of the petitioner's premises, which is open for all the members of the family as also to the public.

7. Under these circumstances, the notice of motion is made absolute in terms of prayer clause (a) and (b).

8. The learned Counsel for the defendant prays for stay of this Order for a period of eight weeks. The learned Counsel for the petitioner, however, objects the same stating that no inconvenience will be caused to the defendant as he is provided with an independent accommodation with kitchen facility. Under the circumstances, I am not inclined to grant the request made by the learned Counsel for the defendant. The same is, therefore, rejected.

9. The notice of motion is disposed of accordingly.

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[S.K.Shah , J.]